

Exhibit 9

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 COUNTY OF SAN FRANCISCO**

COORDINATION PROCEEDING SPECIAL)	Case No. CJC-18-004978
TITLE [RULE 3.550])	
	)	Judicial Council Coordination Proceeding
TEZOS ICO CASES	)	No. 4978
	)	<u>CLASS ACTION</u>
)	
Included Action:	)	SPECIALLY APPEARING
	)	DEFENDANT TEZOS STIFTUNG'S
<i>Baker v. Dynamic Ledger Solutions, Inc., et al.,</i>	)	NOTICE OF MOTION AND MOTION
Superior Court of California, County of San	)	TO QUASH SERVICE OF SUMMONS;
Francisco, Case No. CGC-17-562144	)	MEMORANDUM OF POINTS AND
	)	AUTHORITIES IN SUPPORT
)	
	)	Date: August 27, 2019
	)	Time: 1:30 p.m.
	)	Dept.: 613
	)	Before the Honorable Teri L. Jackson
)	
	)	Action Filed: October 25, 2017
	)	Trial Date: None set

NOTICE OF MOTION AND MOTION

TO THE COURT, ALL PARTIES, AND COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on August 27, 2019 at 1:30 p.m., or as soon thereafter as this matter may be heard, in Department 613 of the above-entitled Court, located at 400 McAllister Street, San Francisco, California 94102, Specially Appearing Defendant Tezos Stiftung (the “Foundation”)¹ will and hereby does move the Court under California Code of Civil Procedure §§ 418.10(a)(1), 418.10(a)(2), and 581(h) for an order quashing the service of summons on it and dismissing the claims against it or, in the alternative, staying the action against it. This Motion will be made on the grounds that the Court lacks personal jurisdiction over the Foundation and that California is an inconvenient forum in which to litigate this dispute.

The Motion is based upon this Notice of Motion and the supporting Memorandum of Points and Authorities, the pleadings and records on file with this Court, all matters of which this Court may take judicial notice, the concurrently filed declarations and exhibits, other materials in the record, argument of counsel, and such other matters as the Court may consider.

¹ The Foundation’s Motion is intended to serve as a special appearance pursuant to California Code of Civil Procedure § 418.10(e)(1). By making a special appearance in this matter, the Foundation does not waive its right to raise any defenses, including lack of jurisdiction, in any later proceedings, including in connection with any effort to enforce any judgment.

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MEMORANDUM OF POINTS AND AUTHORITIES**PRELIMINARY STATEMENT**

In 2017, Tezos Stiftung (the “Foundation”), a nonprofit entity located in Switzerland that is overseen by Swiss regulators, held a fundraiser (the “Fundraiser”) to support a new blockchain technology called Tezos. Contributors around the world donated to the Fundraiser using software located in Europe, pursuant to terms that expressly stated that contributions were made in Europe and that any disputes would be adjudicated in Switzerland under Swiss law. Ignoring the fundamentally foreign nature of both the Fundraiser and the Foundation, plaintiff has brought suit in California state court, alleging that the Fundraiser was an unregistered securities offering. But this Court does not have personal jurisdiction over the Foundation, nor is this the proper venue to address these claims. The claim against the Foundation should be dismissed or, in the alternative, stayed until and while plaintiff pursues his claim in Switzerland.

As a threshold matter, plaintiff cannot meet his burden of establishing jurisdiction over the Foundation. The Foundation has no physical presence in California; it has *no* offices and conducts *no* business here. Plaintiff is thus unable to establish general jurisdiction. Any claim to specific jurisdiction fares no better: None of plaintiff’s allegations regarding the Foundation’s conduct—which amount to little more than that it accepted contributions during the Fundraiser—establish that the Foundation targeted California in any way. To the extent that plaintiff alleges California activity by *other defendants*, plaintiff’s conclusory assertion that those defendants controlled the Foundation fails as a matter of law to allow the Court to impute their activity to the Foundation. The claim against the Foundation should therefore be dismissed for lack of jurisdiction.

The foreign locus of the Fundraiser compels another conclusion as well: California is not the proper forum to hear this dispute. Crucial witnesses and evidence are located in Europe, requiring discovery pursuant to the Hague Convention and consistent with Swiss and European data laws, and enforcement of any judgment would be subject to Swiss scrutiny. These and other factors weighing in favor of a Swiss forum are reinforced by the terms governing the Fundraiser, which require that any disputes—including this one—be adjudicated by Swiss courts. Thus, at a minimum, the claim should be stayed until and while plaintiff brings suit in the proper forum.

STATEMENT OF FACTS AND ALLEGATIONS

The Tezos protocol is decentralized software that facilitates verification of transactions through a cryptocurrency known as “XTZ.” Defendant Dynamic Ledger Solutions, Inc. (“DLS”), a U.S. company that was cofounded by defendants Arthur and Kathleen Breitman, initially developed the Tezos protocol beginning in 2014. (*See* Decl. of Serge A. Voronov (“Voronov Decl.”), Ex. A (“Overview”) §§ 1, 3.1.)² The developers working on the Tezos protocol have been primarily located in France since at least early 2017, well before the Fundraiser. (*See id.* § 3.2.)

The Foundation, a duly organized Swiss nonprofit based in Zug, Switzerland, was founded in or around May 2017. (Second Am. Compl. (“SAC”) ¶ 18.) It is an autonomous legal entity committed to a defined purpose, *see* Swiss Civ. Code, art. 80—here, to promote and foster the use of the Tezos protocol, including its ongoing development. (Overview § 3.3.) The Foundation’s operations are located abroad, at its offices in Zug, and it is not alleged to have any offices, employees, or operations of any kind in California. It is overseen by a six-member Board, and is subject to further oversight by the Swiss Federal Foundation Supervisory Authority (the “FSA”). *See* Swiss Civ. Code, art. 84; (Decl. of Eric Stupp (“Stupp Decl.”) ¶¶ 13-14). The Swiss Financial Market Supervisory Authority (“FINMA”) also regulates participants in Switzerland’s financial markets and monitors issuers of crypto tokens. Swiss Financial Market Supervision Act, art. 5; (Stupp Decl. ¶¶ 16-17).³ Plaintiff does not allege that DLS has any ownership interest in the Foundation or that the Breitmans serve as directors, officers, or employees of the Foundation.

In July 2017, the Foundation held the Fundraiser and raised over \$230 million to, among other things, develop and promote use of the Tezos protocol. (SAC ¶¶ 6, 60, 65-66.) The Fundraiser was governed by the Tezos Contribution and XTZ Allocation Terms and Explanatory Notes. (Voronov Decl., Ex. B (the “Contribution Terms”) ¶ 1.) Those terms explained the mechanics of donating, noting that contributions “must be made using the contribution software

² On a motion to quash for lack of personal jurisdiction or based on inconvenient forum, the court may consider evidence outside the pleadings. *See ViaView, Inc. v. Retzlaff*, 204 Cal. Rptr. 3d 566, 575 (Ct. App. 2016); *Morris v. AGFA Corp.*, 51 Cal. Rptr. 3d 301, 309 (Ct. App. 2006).

³ *See also* FINMA, Guidelines for Enquiries Regarding the Regulatory Framework for Initial Coin Offerings (ICOs) (Feb. 16, 2018), <https://www.finma.ch/en/~media/finma/dokumente/dokumentencenter/myfinma/1bewilligung/fintech/wegleitung-ico.pdf?la=en>.

1 . . . provided by TEZOS,” and that the contribution and protocol software were located in
 2 Europe, where all contributions were deemed made. (*Id.* ¶¶ 14, 17, 46.) The Contribution Terms
 3 also provided that Swiss law governed the contributions and that any dispute arising therefrom
 4 “shall be exclusively and finally settled by the ordinary courts of Zug, Switzerland.” (*Id.* ¶ 48.)

5 Plaintiff Andrew Baker is a resident of San Diego, California, who allegedly contributed
 6 one bitcoin to the Fundraiser on July 12, 2017 (SAC ¶ 17), out of a total of 65,681 bitcoin and
 7 361,122 ether contributed worldwide (Voronov Decl., Ex. C).

8 PROCEDURAL HISTORY

9 On October 25, 2017, plaintiff filed a complaint alleging violations of the federal securities
 10 laws against the Foundation and other entities. DLS removed the case to federal court, and it was
 11 remanded on April 19, 2019. The case was subsequently coordinated with *Trigon Trading Pty.*
 12 *Ltd v. Dynamic Ledger Solutions, Inc.*, No. 18CIV02045 (Sup. Ct. San Mateo), but proceedings
 13 in the cases were stayed in favor of a pending federal action concerning substantially similar
 14 claims (Order (July 23, 2018)), though plaintiff was permitted to continue to attempt service
 15 (Minutes (Oct. 19, 2018)). On March 28, 2019, the Court lifted the stay and instructed the
 16 parties who had appeared to share discovery from the pending federal action. (Order (Mar. 28,
 17 2019).) Plaintiff has since received the entirety of DLS’s document production in the federal
 18 action, totaling thousands of documents. On May 16, 2019, Baker filed the SAC, and the
 19 Foundation acknowledged service on June 24, 2019 through the undersigned counsel.

20 LEGAL STANDARDS

21 Where a defendant challenges personal jurisdiction, the plaintiff has the burden of
 22 proving “the factual bases justifying the exercise of jurisdiction.” *ViaView, Inc. v. Retzlaf*, 204
 23 Cal. Rptr. 3d 566, 574 (Ct. App. 2016). The plaintiff “must come forward with affidavits and
 24 other competent evidence to carry this burden,” *id.* at 575, not simply allegations in an unverified
 25 complaint, *see In re Auto. Antitrust Cases I & II*, 37 Cal. Rptr. 3d 258, 269 (Ct. App. 2005).
 26 Moreover, a court may stay an action on the ground of inconvenient forum if it finds that, “in the
 27 interest of substantial justice,” the action should be adjudicated elsewhere. Cal. Civ. Pro. Code
 28 §§ 418.10(a)(2), 410.30(a); *see also Stangvik v. Shiley Inc.*, 819 P.2d 14, 17 (Cal. 1991).

ARGUMENT

I. This Court Lacks Personal Jurisdiction Over the Foundation

A court may exercise personal jurisdiction over a non-resident defendant only if the plaintiff establishes that the defendant has constitutionally adequate “minimum contacts” with California. *See Pavlovich v. Superior Court*, 58 P.3d 2, 6 (Cal. 2002); *see also* Cal. Civ. Pro. Code §§ 418.10(a)(1), 581(h). Plaintiff does not claim that this Court can exercise general jurisdiction over the Foundation,⁴ so he must therefore establish specific jurisdiction. Exercising specific jurisdiction over a defendant requires a plaintiff to show that (1) the defendant “*purposefully* availed [itself] of forum benefits”; (2) the claim arises out of the defendant’s forum-related contacts; and (3) the exercise of jurisdiction comports with notions of fair play and substantial justice, i.e., that it is reasonable. *Pavlovich*, 58 P.3d at 7 (emphasis added).

Plaintiff’s mere allegations of jurisdiction cannot suffice to meet his burden. *See Auto. Antitrust*, 37 Cal. Rptr. 3d at 269. But even as alleged, nothing about the conduct underlying plaintiff’s claims establishes that the *Foundation* purposefully targeted California. And plaintiff’s wholly conclusory—and unsupported—allegation that the Foundation was “controlled” by the other defendants (SAC ¶ 25) fails as a matter of law to establish the existence of jurisdiction. In these circumstances, any exercise of jurisdiction over a Swiss nonprofit, overseen by a Swiss regulatory authority, with virtually no ties to California, fails to comport with “traditional notions of fair play and substantial justice.” *Pavlovich*, 58 P.3d at 6 (internal quotation marks omitted).

A. The Foundation’s Alleged Conduct Did Not Target California, Nor Does Plaintiff’s Claim Arise from That Alleged Conduct

Nothing alleged in the SAC demonstrates that plaintiff’s claim arises from purposeful availment by the Foundation of California’s laws. The touchstone of this analysis is “defendant’s intentionality,” which “is only satisfied when the defendant *purposefully* and *voluntarily* directs its activities toward the forum.” *Bombardier Recreational Prods., Inc. v. Dow*

⁴ Nor could he. General jurisdiction lies only if the defendant’s activities in the forum are “substantial, . . . continuous and systematic.” *DVI, Inc. v. Superior Court*, 128 Cal. Rptr. 2d 683, 690 (Ct. App. 2002) (internal quotation marks omitted). Plaintiff has not alleged any facts demonstrating that the Swiss Foundation has a regular and systematic presence in California.

1 *Chem. Can. ULC*, 157 Cal. Rptr. 3d 66, 75 (Ct. App. 2013) (emphasis added). Under the clear
 2 specific jurisdiction standard, neither of the SAC’s two sets of allegations in support of
 3 plaintiff’s jurisdictional argument (SAC ¶ 18) is sufficient as a matter of law.

4 **1. The Foundation Did Not Target Californian Contributors**

5 Plaintiff first alleges that the Foundation itself had contact with California as a result of
 6 the Fundraiser. But the Foundation’s receipt of contributions from “California residents,
 7 including plaintiff” (*id.*) is wholly irrelevant. *Plaintiff’s* voluntary contribution cannot establish
 8 *the Foundation’s* purposeful availment of California. *See Great-W. Life Assurance Co. v.*
 9 *Guarantee Co. of N. Am.*, 252 Cal. Rptr. 363, 366 (Ct. App. 1988) (plaintiff’s “[u]nilateral
 10 activity . . . cannot satisfy the requirement of contact with the forum State” (internal quotation
 11 marks omitted)). The same is true of donations made by others, which in any event cannot create
 12 specific jurisdiction with respect to *plaintiff’s* claim. *See Greenwell v. Auto-Owners Ins. Co.*,
 13 182 Cal. Rptr. 3d 873, 883 (Ct. App. 2015) (specific jurisdiction requires a “connection between
 14 the defendant’s forum activities and *the plaintiff’s* claim” (emphasis added)).

15 Likewise insignificant is plaintiff’s allegation that the Foundation received contributions
 16 through a website, *tezos.com*, allegedly hosted in Phoenix, Arizona. (SAC ¶ 18.) That
 17 allegation is neither relevant—it demonstrates nothing about the Foundation’s purposeful
 18 availment of *California*—nor true: The *tezos.com* website was hosted in Europe. (Voronov
 19 Decl., Ex. D.) Moreover, plaintiff does not (because he cannot) allege that *tezos.com* was aimed
 20 in any way at soliciting California donors, had California advertisers, or even mentioned
 21 California. That is far from the *purposeful targeting* of California that courts require to exercise
 22 specific jurisdiction. *See Pavlovich*, 58 P.3d at 7 (defendant must “purposefully and voluntarily”
 23 direct activities toward forum); *Burdick v. Superior Court*, 183 Cal. Rptr. 3d 1, 9 (Ct. App. 2015)
 24 (holding that critical jurisdictional inquiry in case arising from website is whether defendant
 25 “manifested an intent to direct their website content . . . to a forum state audience”).

26 In fact, all of the Foundation’s actions demonstrate that it was *not* targeting California. The
 27 Foundation is a Swiss entity, and the Fundraiser was intended to further the development of the
 28 Tezos protocol by developers in Europe. The Fundraiser software was located in Europe.

(Voronov Decl., Ex. D.) And contemporaneous documents, such as the Contribution Terms created by the Foundation to govern the Fundraiser, expressly provided that the contributions were deemed made in Europe and subject to Swiss law, and that any disputes arising between the parties are relegated exclusively to the Swiss courts. (Contribution Terms ¶¶ 46, 48.) These facts are inconsistent with any attempt to assert specific jurisdiction over the Foundation on the basis that it purposefully directed itself toward California. *See, e.g., Aquila, Inc. v. Superior Court*, 55 Cal. Rptr. 3d 803, 817 (Ct. App. 2007) (foreign choice of law and forum selection clause weigh against finding purposeful availment); *Ripple Labs, Inc. v. R3 LLC*, No. CGC-17-561205, 2017 WL 9249197, at *1 (Cal. Super. Ct. Dec. 8, 2017) (finding defendants “intentionally avoided directing their activities toward California by negotiating a New York choice-of-law provision”).

2. Other Defendants’ Conduct Is Not Attributable to the Foundation

No doubt recognizing that the Foundation never purposefully interacted with California, plaintiff also claims that jurisdiction exists over the Foundation because certain “acts that allowed the [Fundraiser] to be completed occurred in California.” (SAC ¶ 18.) Critically, however, these were not acts undertaken by the Foundation. Rather, according to plaintiff, Strange Brew, hired by Mr. and Ms. Breitman, developed marketing materials for the Fundraiser (*id.* ¶¶ 51-52); Mr. and Ms. Breitman and Draper promoted the Fundraiser (*id.* ¶¶ 21, 23, 44-50); Draper invested in DLS (*id.* ¶¶ 23, 49); and Mr. Breitman developed, and DLS owned, the intellectual property underlying the Tezos project (*id.* ¶¶ 20, 22, 42).

While plaintiff’s basis for attributing these activities to the Foundation is confused—indeed the SAC appears to intentionally blur the lines between the Swiss Foundation and California-based defendants—at bottom it rests on the assertion that DLS and the Breitmans “controlled and directed” the Foundation’s activities during the Fundraiser. (*Id.* ¶ 25.) But the critical question when assessing the relationship between two entities for personal jurisdiction purposes is “whether the defendant has purposefully directed its activities at the forum state by causing a separate person or entity to engage in forum contacts.” *HealthMarkets, Inc. v. Superior Court*, 90 Cal. Rptr. 3d 527, 535 (Ct. App. 2009) (internal quotation marks omitted). Thus, to establish jurisdiction over the Foundation based on the conduct of others, plaintiff was required to plead facts establishing

1 that the Foundation controlled DLS and the Breitmans and directed their actions to California.
 2 Plaintiff posits no such thing. There is not a single allegation in the SAC suggesting that the
 3 Foundation even had the *ability* to direct the actions of DLS or the Breitmans, let alone that it
 4 actually *caused* them to perform Fundraiser-related functions in California. As a result, there is no
 5 legal basis on which to impute any alleged conduct by DLS or the Breitmans to the Foundation.

6 Even if plaintiff's inverted theory of agency accurately reflected the state of the law—and it
 7 does not—he still could not show a basis for imputing DLS's and the Breitmans' activities to the
 8 Foundation. Despite access to the entirety of DLS's document production, plaintiff's allegations of
 9 control amount to little more than that DLS “advises” the Foundation on technological matters and
 10 that DLS and the Foundation “have negotiated a contractual agreement” pursuant to which the
 11 Foundation may eventually acquire DLS. (SAC ¶ 43.) But advice is expressly *not* control, and if
 12 anything the need for an arm's-length agreement indicates that neither controlled the other.⁵
 13 Indeed, plaintiff's own allegations contradict the notion that DLS controlled the Foundation's
 14 affairs (*e.g.*, *id.* ¶¶ 84-87 (detailing dispute between Breitmans and the Foundation's president))—
 15 he even acknowledges that the Foundation's former president described Mr. and Ms. Breitman as
 16 merely “trying,” but not succeeding, to control the Foundation (*id.* ¶ 25).⁶

17 With no basis to impute the actions of others to the Foundation, plaintiff has not shown
 18 *any* intentional connection between the Foundation and California. For that reason, the Court
 19 cannot exercise personal jurisdiction over the Foundation.
 20

21 ⁵ That agreement does not provide a basis for jurisdiction. The mere existence of a contract with
 22 a California resident does not show purposeful availment of forum benefits. *See, e.g., Malone v.*
 23 *Equitas Reinsurance Ltd.*, 101 Cal. Rptr. 2d 524, 530 (Ct. App. 2000). Nor does plaintiff's
 24 federal securities law claim even arise out of the agreement: His contribution to the Foundation
 25 is not alleged to have been pursuant to or as a result of that agreement. *See Roman v. Liberty*
Univ., Inc., 75 Cal. Rptr. 3d 828, 835-36 (Ct. App. 2008) (holding that specific jurisdiction could
 not be exercised where defendant university's scholarship agreement with plaintiff in California
 bore no connection to plaintiff's personal injury claim).

26 ⁶ Nor do these allegations establish an alter-ego relationship. Doing so would require plaintiff to
 27 show “a unity of interest and ownership” between two entities such that separate corporate
 28 personalities no longer exist. *Sonora Diamond Corp. v. Superior Court*, 99 Cal. Rptr. 2d 824,
 836 (Ct. App. 2000). The necessary evidence—that DLS has an ownership interest in the
 Foundation; that the Foundation and DLS have commingled their assets, share office space, or
 employees; or that the Foundation is inadequately capitalized or disregards corporate formalities,
see Sonora, 99 Cal. Rptr. 2d at 836—simply does not exist and has not even been alleged.

B. Exercising Jurisdiction Over the Foundation Would Be Unreasonable

Because plaintiff's claim does not arise out of any purposeful forum-related contact, the Court need not reach the reasonableness question. In any event, given the paucity of the Foundation's contacts with California, the exercise of jurisdiction would be unreasonable, providing an additional basis for dismissal. *See Spokane Eye Clinic, Inc. v. Superior Court*, 133 Cal. Rptr. 838, 840 (Ct. App. 1976) (listing relevant reasonableness factors).

First, plaintiff's cause of action does not arise out of the Foundation's local activity because there *was no local activity* on the part of the Switzerland-based Foundation. What little is alleged about the Foundation makes clear that its operations have been, and are, located in Europe. (E.g., SAC ¶¶ 18, 90, 94 (alleging that the Swiss FSA oversaw the Swiss Foundation's activities), 96 (Ms. Breitman referring to the Foundation as "those guys in Zug").)

Second, the burden on the Foundation to defend this case in California would be substantial. *See Xu v. Nobel Assembly at Karolinska Institutet*, No. SACV 13-320-JLS (ANx), 2013 WL 9760036, at *5 (C.D. Cal. Nov. 20, 2013) (recognizing the "significant burden" on a foreign nonprofit to litigate in the United States). That the Foundation is already being inconvenienced by defending against the more advanced, related federal action is not to the contrary. The Foundation should not be required to defend against *multiple actions* addressing the same issues thousands of miles away from its headquarters.

Third, California's interest in this suit is minimal. Plaintiff donated to a Swiss foundation, under terms governed by Swiss law, to support a project being developed in Europe, and has now brought suit under federal—not even California—law. Switzerland's interest in this case, on the other hand, creates "a high barrier of sovereignty [that] tends to undermine the reasonableness of exercising personal jurisdiction." *Auto. Antitrust Cases*, 37 Cal. Rptr. 3d at 268 (holding that courts should "be[] unwilling to find the serious burden on an alien defendant outweighed by minimal interests of the plaintiff or of California"). The Foundation is subject to oversight by the FSA, which monitors the Foundation to ensure that its assets are spent in accordance with its mission. (Stupp Decl. ¶¶ 13-14.) Separately, FINMA oversees the appropriate and lawful distribution of cryptocurrencies by Swiss entities under Swiss law. (*Id.* ¶¶ 16-17.) Switzerland's

policy interests are therefore clearly implicated because plaintiff seeks to assert U.S. law over a Swiss-chartered entity. *See Callaway Golf Corp. v. Royal Canadian Golf Ass’n*, 125 F. Supp. 2d 1194, 1206 (C.D. Cal. 2000) (holding that the exercise of jurisdiction was “undermine[d]” by the Canadian defendant’s “corporate charter [issued] by the Canadian government”).

Finally, Switzerland is available as an alternative forum to hear plaintiff’s complaint. *See infra* Pt. II.A.

With the factors weighing against exercising jurisdiction, the Court should dismiss the claims against the Foundation on this independent basis.

II. This Action Should Be Stayed Under the Inconvenient Forum Doctrine

At a minimum, the Court should decline to exercise jurisdiction over the claims against the Foundation because they are more appropriately and justly tried elsewhere—namely, in Switzerland. Even where a court has personal jurisdiction, it may stay an action on the ground of inconvenient forum if it finds that, “in the interest of substantial justice,” the action should be adjudicated elsewhere. Cal. Civ. Pro. Code §§ 418.10(a)(2), 410.30(a). Switzerland is a suitable alternative forum and both the public and private interest factors favor adjudicating the dispute there. That conclusion is bolstered by the Contribution Terms’ forum-selection clause, which mandates that all disputes in connection with the Fundraiser proceed in Switzerland. The Court should stay the claims against the Foundation until and while plaintiff brings suit in Switzerland.

A. Switzerland Is a Suitable Alternative Forum

In considering whether to grant a motion based on inconvenient forum, a court first determines whether the alternative forum is a “suitable” place for trial. *Stangvik v. Shiley Inc.*, 819 P.2d 14, 17 (Cal. 1991). Suitability rests on whether the alternative forum would have jurisdiction over an analogous claim not barred by the statute of limitations. *See Guimei v. Gen. Elec. Co.*, 91 Cal. Rptr. 3d 178, 185 (Ct. App. 2009).

Switzerland is a suitable alternative forum. Plaintiff’s claim is that the Fundraiser involved unregistered securities. Like U.S. law, Swiss law requires that issuers of securities follow certain procedures to apprise potential investors of the risks associated with the securities—such as publishing a prospectus that discloses material information. (Stupp Decl. ¶¶ 19-21.) Failure to

1 publish such a prospectus, just like failing to register in the United States, entitles purchasers of the
 2 security to recover from the issuer. (*Id.* ¶ 22.) Swiss law also provides for recovery under broader
 3 causes of action, such as negligence and misrepresentation. (*Id.* ¶¶ 23-26.) These claims remain
 4 timely for years, and applicable statutes of limitations may be tolled by foreign lawsuits. (*Id.* ¶ 31.)
 5 Plaintiff can thus have a Swiss court consider the same type of matter that he has brought before
 6 this Court, and such courts provide a suitable alternative forum. *See In re Alcon S'holder Litig.*,
 7 719 F. Supp. 2d 263, 273 (S.D.N.Y. 2010) (holding that Switzerland was an adequate alternative
 8 forum in an action arising out of a securities transaction).

9 **B. The Private and Public Factors Strongly Favor Adjudication in Switzerland**

10 After determining that an alternative forum is suitable, courts look to whether the
 11 private and public factors favor a stay. *Stangvik*, 819 P.2d at 18. The numerous factors
 12 weighed by California courts are meant to be applied “flexibly,” without undue emphasis on
 13 any one factor. *Id.*; *see Roman v. Liberty Univ., Inc.*, 75 Cal. Rptr. 3d 828, 838 (Ct. App.
 14 2008) (in weighing the private and public factors, “[n]o single factor is predominant”). The
 15 private factors relate to where the trial and enforcement of any judgment will be most
 16 expeditious and least expensive, including the “ease of access to sources of proof, the cost of
 17 obtaining attendance of witnesses, and the availability of compulsory process for attendance of
 18 unwilling witnesses.” *Stangvik*, 819 P.2d at 17. The public factors weigh the competing
 19 interests of California and the alternate jurisdiction in the litigation. *See Chong v. Superior*
 20 *Court*, 68 Cal. Rptr. 2d 427, 430 (Ct. App. 1997).

21 The foreign locus of this case means that the private interest factors militate strongly in
 22 favor of a stay. The Foundation’s operations are in Switzerland, the network developers are
 23 primarily located in France, and the contribution software is located in Europe. The
 24 Foundation’s European presence and contacts mean that the witnesses and documents needed to
 25 understand certain technical functions of the Tezos tokens—essential to a complete analysis of
 26 whether the tokens constitute a security—are located in Europe. Any discovery in United States
 27 courts would need to proceed pursuant to the Hague Evidence Convention, creating delays,
 28

1 additional expense, and a significant burden on the parties.⁷ *See Pierbug GmbH & Co. Kg. v.*
 2 *Superior Ct.*, 186 Cal. Rptr. 876, 882 (Ct. App. 1982) (acknowledging that compliance with the
 3 Hague Evidence Convention may “entail additional cost”); *Alcon*, 719 F. Supp. 2d at 276
 4 (finding that taking testimony from witnesses “who reside in Switzerland or elsewhere in
 5 Europe” would require proceedings under the Hague Convention, “a prospect that entails
 6 significant amounts of time even in ordinary cases,” and would likely cause “greater financial
 7 hardships” and “additional litigation”). Discovery would also be subject to a number of
 8 European data protection and privacy laws, including the GDPR, that would compound delays
 9 and expense. *See* Regulation (EU) 2016/679, 2016 O.J. (L. 119) 1; Swiss Civ. Code, art. 235.1
 10 (Federal Act on Data Protection imposing limitations on the use and disclosure of documents
 11 abroad). Similarly, non-party international witnesses with involvement in the Fundraiser, such
 12 as former directors of the Foundation or the developers, may not be compelled to testify before
 13 this Court. *See* Cal. Civ. Pro. Code § 1989; *Dendy v. MGM Grand Hotels, Inc.*, 187 Cal. Rptr.
 14 95, 98 (Ct. App. 1982) (a California court may not compel the attendance of out-of-state
 15 witnesses). Moreover, any judgment that plaintiff might obtain in this action would face issues
 16 with enforceability. *See Alcon*, 719 F. Supp. 2d at 277. Enforcement would require plaintiff to
 17 show that this Court’s exercise of jurisdiction over the Foundation was proper under Swiss law
 18 and that the judgment is not contrary to Swiss public policy. (Stupp Decl. ¶¶ 33, 35-36.)

19 Balanced against these concerns is only one factor: plaintiff’s residence in California.
 20 But his residence is given no greater weight than any other factor in the analysis where a
 21 defendant seeks a stay rather than a dismissal. *See Nat’l Football League v. Fireman’s Fund Ins.*
 22 *Co.*, 157 Cal. Rptr. 3d 318, 342-43 (Ct. App. 2013). Indeed, his residence should be afforded
 23 even less weight because plaintiff purports to represent a class of “[a]ll persons” who contributed
 24 to the Fundraiser in July 2017—of which only a fraction reside in California, while many do not
 25 even reside in the United States.

26
 27
 28 ⁷ Indeed, plaintiff did not even purport to serve the Foundation under the Hague Service
 Convention for almost *seven months* after the Court lifted the stay of proceedings to allow him to
 effect service, repeatedly suggesting that such service would be time-consuming and expensive.

1 None of these facts is mitigated by the related federal litigation that the Foundation is
 2 already being forced to litigate in the United States. Indeed, that action only exacerbates the
 3 inconvenience to the Foundation of this nearly identical litigation. If the Foundation must
 4 litigate these same issues in a parallel proceeding, the most logical place to do so would be in the
 5 country contemplated by the Contribution Terms, where the proceeds of the Fundraiser are being
 6 held, and where the majority of the purported class would expect it to proceed. The private
 7 factors thus weigh substantially in favor of adjudicating this dispute in Switzerland.

8 The public factors likewise favor a stay. Though California has some interest in
 9 protecting the interests of its own residents, plaintiff brings this action under federal, not
 10 California, law on behalf of a class that is overwhelmingly foreign. California's interest in this
 11 case is correspondingly diminished. Switzerland, meanwhile, has a significant interest in
 12 enforcing its own securities laws and controlling its own chartered entities. That is particularly
 13 true here, where the Foundation's activities are overseen by Swiss authorities who are actively
 14 monitoring developments in Switzerland's "Crypto Valley." In addition, this action arises in the
 15 context of a novel industry where federal policies have yet to be fully defined. California courts
 16 have taken special care when dealing with cases involving complex economic issues. *Cf.*
 17 *Alvarado v. Selma Convalescent Hosp.*, 64 Cal. Rptr. 3d 250, 254 (Ct. App. 2007) (noting that
 18 "[j]udicial intervention in areas of complex economic policy is inappropriate"). Indeed, courts
 19 have recognized that it simply is not the case that "federal and state securities laws are of
 20 'fundamental importance to American democratic capitalism.'" *Richards v. Lloyd's of London*,
 21 135 F.3d 1289, 1295 (9th Cir. 1998).

22 Whatever interest the Court may have in this case, it is significantly lessened by the fact
 23 that one small donor to the Fundraiser is asking the Court to consider issues under U.S. federal
 24 law on behalf of a largely foreign purported class. Thus, the public interests weigh strongly in
 25 favor of granting a stay so that this action may proceed in Switzerland.

26 **C. The Forum-Selection Clause Requires the Action to Be Stayed**

27 The result dictated by the private and public factors—i.e., a stay until and while plaintiff
 28 brings his claims in Switzerland—is likewise required by the Contribution Terms. Where a

1 contractual forum selection clause exists, the clause is presumed valid and will be enforced
 2 unless the plaintiff can show that enforcement of the clause would be unreasonable. *Intershop*
 3 *Commc'ns v. Superior Court*, 127 Cal. Rptr. 2d 847, 852 (Ct. App. 2002). The Contribution
 4 Terms expressly provide not only that plaintiff's contribution is governed by Swiss law, but also
 5 that "[a]ny dispute" arising out of that contribution "shall be exclusively and finally settled by
 6 the ordinary courts of Zug, Switzerland." (Contribution Terms ¶ 48.) This language is
 7 mandatory, not permissive, under California law. *See Lu v. Dryclean-U.S.A. of Cal., Inc.*, 14
 8 Cal. Rptr. 2d 906, 907 (Ct. App. 1992) (forum-selection clause stating "[a]ny and all litigation
 9 that may arise . . . shall be litigated in [Florida]" was mandatory).

10 Plaintiff cannot escape this mandatory forum-selection clause merely by claiming that he
 11 did not "see or agree" to the Contribution Terms. (SAC ¶ 128.) A browsewrap agreement such
 12 as those terms is binding if "a reasonably prudent user" would have been "on inquiry notice of
 13 [them]." *Nguyen v. Barnes & Noble Inc.*, 763 F.3d 1171, 1177 (9th Cir. 2014).⁸ And here, any
 14 reasonable contributor would have been aware of the Contribution Terms. They were posted,
 15 along with other important information about the Fundraiser, on the Foundation's website, which
 16 contained a prominent link to "Contribution Terms" on its main page. (Voronov Decl., Ex. E.)
 17 The link would have been clearly visible to plaintiff when he—per his own allegations—"read
 18 up on Tezos on its own site." (SAC ¶ 125.) The terms were also distributed through the
 19 Foundation's Twitter and Facebook accounts, as well as in an email sent to a listserv of
 20 individuals interested in Tezos.⁹ Moreover, the Overview document posted to tezos.com—on a
 21 slide bearing the heading "FUNDRAISER"—expressly instructed potential contributors to "refer
 22 to the legal document that will be issued by the Foundation for more details." (Overview § 4.)
 23 Reasonable prudence would have required any contributor to seek out the only legal document
 24 pertaining to the Fundraiser, which contained details not found in the summary Overview. Given
 25 these notifications, the Tezos community at large was well aware of the Contribution Terms and

26 _____
 27 ⁸ California applies federal law in determining whether a browsewrap agreement is enforceable.
See Long v. Provide Commerce, Inc., 200 Cal. Rptr. 3d 117, 122-23 (Ct. App. 2016).

28 ⁹ Voronov Decl., Exs. F (Tezos Foundation (@TezosFoundation), Twitter (June 30, 2017, 9:15
 a.m.)), G (Tezos Foundation, Facebook (June 30, 2017)), H (Email from Tezos Foundation
 regarding "The fundraiser is now live" (June 30, 2017)).

discussed them on, among other places, Reddit and bitcointalk.org.¹⁰ Plaintiff's assertion that he was unaware of the terms is simply incredible in light of his allegations that he researched Tezos on "various cryptocurrency blogs and podcasts" (SAC ¶ 125)—likely including the same ones where the terms were posted. *See, e.g., DeBenedictis v. Merrill Lynch & Co.*, 492 F.3d 209, 217-18 (3d Cir. 2007) (in the securities context, holding that plaintiff was put on inquiry notice by publicly available news articles).¹¹

In the context of a novel technology, reasonable contributors would have done their own research to understand the purpose and mechanics of the Fundraiser before contributing. *Cf. FDIC v. Providence College*, 115 F.3d 136, 141-42 (2d Cir. 1997) (where a transaction is "novel and extraordinary," it creates inquiry notice regarding the background of the transaction). If plaintiff was not actually aware of the Contribution Terms, he was at least willfully blind to them. He cannot evade the clear requirements of the Contribution Terms in this manner.

III. The U.S. District Court's Ruling on the Foundation's Motion to Dismiss Does Not Compel the Same Result Here

The Foundation contested both personal jurisdiction and venue in the related case pending in the U.S. District Court for the Northern District of California. While the Foundation respectfully disagrees with that court's denial of the Foundation's motion, it should not carry any weight here, in a case with different allegations, standards and burdens of proof, and evidence.

Under Federal Rule of Civil Procedure 12(b)(2), a federal plaintiff can defeat a motion to dismiss for lack of personal jurisdiction merely by alleging a prima facie case of jurisdiction.

See Schwarzenegger v. Fred Martin Motor Co., 374 F.3d 797, 800 (9th Cir. 2004). Accordingly,

¹⁰ *See, e.g.,* Voronov Decl. Exs. I (*Tezos Contribution Terms have just been released.*, Reddit (June 30, 2017, 4:10 p.m.), J (*Re: Tezos discussion*, Bitcointalk (July 1, 2017, 4:48 a.m.)).

¹¹ Plaintiff's inquiry notice of the terms is further supported by his sophistication with cryptocurrencies and industry practice. For instance, the genesis sale of ether—which plaintiff has owned for years (SAC ¶ 124)—was governed by its own set of terms. Terms and Conditions of Ethereum Genesis Sale, Ethereum (July 21, 2014), <https://github.com/ethereum/www/blob/master-postsale/src/extras/pdfs/TermsAndConditionsOfTheEthereumGenesisSale.pdf>. Similar agreements were also used in connection with, among others, the EOS Token Distribution and the IOTA Crowdsale. *See* EOS Token Purchase Agreement (Sept. 4, 2017), https://d340lr3764rrcr.cloudfront.net/purchase_agreement/block.one+-+EOS+Token+Purchase+Agreement+-+September+4%2C+2017.pdf; *IOTA Crowdsale Purchase Agreement* (Nov. 25, 2015), <https://factsaboutiota.wordpress.com/crowdsale/>.

1 the federal court’s ruling was predicated on that plaintiff’s *allegations*, not evidence. *See In re*
 2 *Tezos Sec. Litig.*, No. 17-CV-06779-RS, 2018 WL 4293341, at *6 (N.D. Cal. Aug. 7, 2018)
 3 (emphasizing the “relatively modest jurisdictional showing asked of a plaintiff facing dismissal
 4 under Rule 12(b)(2)”). By contrast, California demands more: Baker cannot defeat a motion to
 5 quash service of summons by resting on his allegations; he is required to substantiate his
 6 jurisdictional claims with competent evidence. *ViaView*, 204 Cal. Rptr. 3d at 575; *see also Roy*
 7 *v. Superior Court*, 25 Cal. Rptr. 3d 488, 492 (Ct. App. 2005) (recognizing more onerous burden
 8 on plaintiff in California action at pleading stage as compared to federal practice). Likewise, the
 9 federal plaintiff needed to allege only the Foundation’s contacts with the *United States* as a
 10 whole—not with California specifically, which plaintiff here has utterly failed to do.

11 Similarly, the federal court’s determination on the issue of forum non conveniens—where
 12 it found that the argument “threaten[ed] [plaintiff’s] access to this forum pending discovery” but
 13 could not prevail on a motion to dismiss, *Tezos*, 2018 WL 4293341, at *7—has no bearing on
 14 this Court’s decision. Whereas federal courts have held that a court should dismiss claims under
 15 the doctrine of forum non conveniens only “in exceptional circumstances,” *Paper Consultants*
 16 *Int’l, Ltd. v. S.S. Hong Kong Amber*, 513 F.2d 667, 670 (9th Cir. 1975), California requires only
 17 a showing that the action “may be more appropriately and justly tried” in the alternative forum.
 18 *Stangvik*, 819 P.2d at 17. Moreover, because the Foundation seeks a stay of the proceedings,
 19 rather than dismissal as it did in the federal action, the balance of factors is different here than in
 20 the federal action. *See Nat’l Football League*, 157 Cal. Rptr. at 343-44. Thus the Court should
 21 not give precedential weight to the federal court decision on this issue.

22 CONCLUSION

23 For the foregoing reasons, the Foundation respectfully requests that this Court grant its
 24 motion to quash and to dismiss the claim against the Foundation or, in the alternative, to stay the
 25 claim until and while plaintiff brings suit in Switzerland.

26 The Foundation expressly contests this Court’s jurisdiction. The Foundation reserves the
 27 right to raise the defense of lack of jurisdiction in connection with any effort to enforce any
 28 judgment abroad, including in Switzerland.

1 Dated: July 24, 2019

Respectfully submitted,

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